IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Laxmi Chand Mehta VS. State of Rajasthan & Anr.

S.B. CIVIL WRIT PETITION NO.5791/92
under Article 226 & 227 of the
Constitution of India.

Date of order : 07th September, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Sanjay Mathur for the petitioner.
Mr. L.R. Upadhyay, Dy. Government Advocate.

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BY THE COURT: -

Heard learned counsel for the parties.

In the facts and circumstances of the case, the petition must succeed on a short ground on the basis of facts admitted by the respondents about the procedure adopted for making an exparte enquiry against the petitioner.

Shorn off technicalities and the details, the petitioner who was an Ex-Sarpanch Gram Panchayat Dabayacha, Panchayat Samiti Kherwara, District Udaipur was

served with the memorandum of charges dated 3.10.1987. In response to which the petitioner appeared and submitted his explanation. The enquiry report annexed with the notice dated 26.2.1992 calling upon the petitioner to show cause against the finding reached by the enquiry officer reveals that after the petitioner has filed reply to the memorandum of charges it has proceeded ex parte on the ground that the petitioner had remained absent on 28.9.1991 despite information and the enquiry was completed without further participation of the petitioner. In response to this notice, in his written submission, the petitioner clearly pointed out that after the petitioner had submitted reply to the memorandum of charges, the Enquiry Officer, viz. the SDO Salumbar had fixed 28.9.1991 as next date of hearing. The petitioner was present in Court of SDO until 3 PM on 28.9.1991 but SDO, Salumbar was absent from his office and his Reader informed that officer would not be coming on the date and thereafter he left the office of the SDO. However, the officer has decided to proceed exparte for his not responding to the notice and remaining absent on 28.9.1991. There has been no consideration of this objection to the exparte enquiry report submitted by the Enquiry Officer in the final order dated

2.6.1996 (Annex.7).

In the writ petition, the petitioner specifically raised this ground in para 7. These facts were not denied, instead it was specifically admitted that for some reason the SDO could not reach the place where the petitioner was asked to remain present. Reply to para 7 reads as under:-

> "7. That in reply to averments of para 7 of the writ petition, it is submitted on account of some unavoidable circumstances, the respondent i.e. S.D.O. Could not reach the place where the petitioner was asked to present. But the petitioner without giving any information in the office left the place and on calling by S.D.O. he was not available there. This act of the petitioner also amount to mis-conduct of duty.

Even in para 8 of the return, the respondent admitted that the petitioner was present on 28th Sept., 1991 while the SDO himself was not present. One is to guess if the officer was not present and his reader was informed or even if the reader was not informed before leaving the place until 3:00 PM, the officer has not reached his office. As a matter of

fact, the statements made in paras 7 and 8 of affidavit are to some extent contradictory while in para 7 unequivocally it has been admitted that on the date fixed for petitioner's presence, the SDO himself was not present. In para 8, it is stated that the petitioner did not inform the reader of the SDO before leaving the office because the officer was not present until 3 PM on 28.9.1991.

As a matter of fact, the conduct of the Enquiry Officer, the SDO, who is a public servant and is required remain present in his office in time and throughout the day, unless he is on leave or away on official duty, the persons who are required to be present on day are not hostages to wait for such officer throughout the day until they are informed when the officer shall be in office to take up their matter. That is the least that a public servant owes to public whom he serves. He cannot don the mantle of feudal Lords to keep people waiting, when he himself does not care to reach his appointed place of duty in time nor he informs the waiting people about his possible time of appearance.

When the petitioner was already present in the

office where he was asked to remain present at the appointed time and was so present uptil 3 PM, there was no occasion for the officer to have ordered exclusion of petitioner from further participation for his own default. As a matter of fact, the officer himself has misconducted by not appearing in the office at which time the office time starts. Therefore, the breach of principles of justice is writ large on the admitted facts of the case.

So far as the question of prejudice is concerned, when enquiry has been conducted without participation at all, the prejudice to the case of the petitioner does not need any elaboration. The impugned order having been based in total breach of principles of natural justice by keeping out the participation of the petitioner from the proceedings, in the aforesaid circumstances for the fault of Enquiry Officer, cannot be sustained.

The petition is allowed. The impugned order Annex.7 imposing punishment on the petitioner is quashed. Cost of this petition shall be paid by the Enquiry Officer to the petitioner which is quantified at Rs.3000/-.

[ RAJESH BALIA ], J.

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